

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HENRY A. JONES,

CV F 05 307 AWI SMS P

Plaintiff,

v.

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND (Doc. 1.)

MILLIGAN, et. al.,

ORDER DIRECTING CLERK OF COURT TO
SEND PLAINTIFF BLANK CIVIL RIGHTS
FORM

Defendants.

Henry A. Jones ("Plaintiff") is a federal prisoner proceeding pro se in this civil action. Plaintiff seeks relief pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors.

Plaintiff filed the instant action on February 24, 2005, in the Sacramento Division of the U.S. District Court for the Eastern District of California. The Case was received on March 3, 2005.

A. SCREENING REQUIREMENT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

“Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), *citing* Conley v. Gibson, 355 U.S. 41, 45-46 (1957); *see also* Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

B. SUMMARY OF COMPLAINT

Plaintiff states that he suffers from a mental illness that “they” used to attempt to cause him to kill himself by torturing him and causing his untreated mental illness to cause him pain and injury. Plaintiff states that the prison officials “cruel and diabolical” acts caused him to try to kill himself by cutting his wrist and overdosing on medication. Plaintiff alleges that his right to access to the court, due process with respect to legal mail, equal protection, and freedom of speech have been violated.

C. DISCUSSION

1. Linkage Requirement

The Civil Rights Act under which this action was filed provides:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See

1 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
 2 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
 3 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
 4 in another’s affirmative acts or omits to perform an act which he is legally required to do that
 5 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
 6 Cir. 1978). In order to state a claim for relief under section 1983, plaintiff must link each named
 7 defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s
 8 federal rights.

9 In this case, Plaintiff fails to link any of the named Defendants to any act or omission
 10 giving rise to a constitutional violation. The Court will provide Plaintiff with the relevant law
 11 below so as to aid him in providing the appropriate facts to support his allegations.

12 ***2. Access to Courts***

13 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey,
 14 518 U.S. 343, 346 (1996). The right of access is merely the right to bring to court a grievance the
 15 inmate wishes to present, and is limited to direct criminal appeals, habeas petitions, and civil
 16 rights actions. Id. at 354. The State is not required to enable the inmate to discover grievances
 17 or to litigate effectively once in court. Id.

18 Inmates do not have the right to a law library or legal assistance. Id. at 351. Law libraries
 19 and legal assistance programs are only the means of ensuring access to the courts. Id. Because
 20 inmates do not have “an abstract, freestanding right to a law library or legal assistance, an inmate
 21 cannot establish relevant actual injury by establishing that his prison’s law library or legal
 22 assistance program is subpar in some theoretical sense.” Id. Rather, an inmate claiming
 23 interference with or denial of access to the courts must show that he suffered an actual injury. Id.

24 Here, although Plaintiff does not link a Defendant to the acts concerning his legal mail,
 25 Plaintiff states that his legal property was destroyed. These, however, are insufficient facts to
 26 state a claim for access to the Court.

27 ***3. Property Deprivation/Destruction***

28 Plaintiff alleges that his legal papers were destroyed. However, Plaintiff does not state

1 sufficient facts regarding the loss or destruction of property to allow the Court to determine
2 whether his claim is cognizable.

3 Plaintiff is informed that “an unauthorized intentional deprivation of property by a state
4 employee does not constitute a violation of the procedural requirements of the Due Process
5 Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is
6 available.” Hudson v. Palmer, 468 U.S. 517, 533 (1984). Thus, to the extent the property
7 deprivation was unauthorized, Plaintiff would not have a claim for relief.

8 ***4. Equal Protection***

9 Equal protection claims arise when a charge is made that similarly situated individuals are
10 treated differently without a rational relationship to a legitimate state purpose. See San Antonio
11 School District v. Rodriguez, 411 U.S. 1 (1972). In order to state a § 1983 claim based on a
12 violation of the equal protection clause of the Fourteenth Amendment, a plaintiff must show that
13 defendants acted with intentional discrimination against plaintiff or against a class of inmates
14 which included plaintiff. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (equal
15 protection claims may be brought by a “class of one”); Reese v. Jefferson Sch. Dist. No. 14J, 208
16 F.3d 736, 740 (9th Cir. 2000); Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998); Federal
17 Deposit Ins. Corp. v. Henderson, 940 F.2d 465, 471 (9th Cir. 1991); Lowe v. City of Monrovia,
18 775 F.2d 998, 1010 (9th Cir. 1985). “A plaintiff must allege facts, not simply conclusions, that
19 show that an individual was personally involved in the deprivation of his civil rights.” Barren at
20 1194.

21 Although Plaintiff alleges defendants violated the Equal Protection Clause of the
22 Fourteenth Amendment, Plaintiff has alleged no specific facts demonstrating that any of the
23 named Defendants acted with intentional discrimination against Plaintiff.

24 ***5. First Amendment - Visitation***

25 Plaintiff alleges that his First Amendment rights were violated when he was not allowed
26 to communicate with his Mother when she was in the hospital.

27 “An inmate does not retain rights inconsistent with proper incarceration,” and “freedom
28 of association is among the rights least compatible with incarceration.” Overton v. Bazzetta, 123

1 S.Ct. 2162, 2167 (2003). Accordingly, “[s]ome curtailment of that freedom must be expected in
2 the prison context.” Id.

3 Plaintiff does not allege sufficient facts to state a cognizable claim against any Defendant
4 under the First Amendment.

5 **D. CONCLUSION**

6 The Court finds that Plaintiff’s complaint does not contain any claims upon which relief
7 can be granted under § 1983 against any of the Defendants. The Court will provide Plaintiff with
8 time to file an Amended Complaint curing the deficiencies identified above should he wish to do
9 so.

10 Plaintiff must demonstrate in the Amended Complaint how the conditions complained of
11 resulted in a deprivation of his constitutional rights. See, Ellis v. Cassidy, 625 F.2d 227 (9th Cir.
12 1980). The Amended Complaint must specifically state how each Defendant is involved.
13 Further, there can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
14 connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423,
15 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
16 F.2d 740, 743 (9th Cir. 1978).

17 Finally, Plaintiff is advised that Local Rule 15-220 requires that an Amended Complaint
18 be complete in itself without reference to any prior pleading. As a general rule, an Amended
19 Complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
20 1967). Once an Amended Complaint is filed, the original Complaint no longer serves any
21 function in the case. Therefore, in an Amended Complaint, as in an original Complaint, each
22 claim and the involvement of each defendant must be sufficiently alleged. The Amended
23 Complaint should be clearly and boldly titled “AMENDED COMPLAINT,” reference the
24 appropriate case number, and be an original signed under penalty of perjury.

25 **E. ORDER**

26 The Court HEREBY ORDERS:

- 27 1. The Clerk of Court is DIRECTED to SEND Plaintiff a blank civil rights
28 complaint form;

2. The Complaint is DISMISSED with leave to amend. WITHIN THIRTY (30) days from the date of service of this order, Plaintiff SHALL:

- a. File an Amended Complaint curing the deficiencies identified by the Court in this Order, or
- b. Notify the Court in writing that he does not wish to file an Amended Complaint and pursue the action but instead wishes to voluntarily dismiss the case.

Plaintiff is forewarned that his failure to comply with this Order may result in a Recommendation that the Complaint be dismissed pursuant to Local Rule 11-110.

IT IS SO ORDERED.

Dated: October 4, 2006
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE